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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MICHAEL MALACZEWSKI
11036 Delphinus
San Diego, CA 92126
Physical Therapist License No. PT 28993

Respondent.

Case Nos. ID 2004 63740
ID 2004 63939

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about December 11, 2003, the Physical Therapy Board of California issued Physical Therapist License No. PT 28993 to MICHAEL MALACZEWSKI (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2005, unless renewed.

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1 license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed
2 on appeal or when an order granting probation is made suspending the imposition of sentence,
3 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person
4 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
5 of guilty, or dismissing the accusation, information, or indictment.

6 COST RECOVERY

7 7. Section 2661.5 of the Code states:

8 (a) In any order issued in resolution of a disciplinary proceeding before
9 the board, the board may request the administrative law judge to direct any
10 licensee found guilty of unprofessional conduct to pay to the board a sum not to
11 exceed the actual and reasonable costs of the investigation and prosecution of the
12 case.

13 FIRST CAUSE FOR DISCIPLINE

14 (Conviction of a Crime)

15 8. Respondent is subject to disciplinary action under Code sections 2660(d)
16 and 2660(i), in that he was convicted of a crime substantially related to the qualifications,
17 functions, or duties of a physical therapist. The circumstances are as follows:

18 Conviction of August 15, 2000

19 D. On or about July 21, 2000, Respondent was arrested and
20 cited for shoplifting a videotape from a store in violation of violating 2C-20-11
21 [shoplifting].

22 E. A Complaint was filed in Municipal Court, Borough of
23 Brooklawn, in the State of New Jersey, entitled *The State of New Jersey vs.*
24 *Michael T. Malaczewski*, charging Respondent with violating Statute No. 2C-20-
25 11 [shoplifting].

26 F. On or about August 15, 2000, Respondent pled guilty to
27 violating a city ordinance of disturbing the peace and was fined.

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3 SECOND CAUSE FOR DISCIPLINE

4 (Dishonest Acts)

5 9. Respondent is further subject to disciplinary action under Code section
6 2660(l), in that he committed dishonest acts when he failed to disclose his 2000 conviction on his
7 application for licensure. The circumstances are as follows:

8 A On or about July 1, 2003, Respondent signed his
9 application for licensure as a physical therapist under penalty of perjury.
10 Respondent disclosed a 2001 driving under the influence conviction on his
11 application for licensure.

12 B. On December 11, 2003, Respondent was issued Physical
13 Therapy License No. PT 28993 based on the information he provided on his
14 application.

15 C. Respondent failed to disclose his August 15, 2000,
16 conviction on his application for licensure (application dated July 1, 2003).

17 AGGRAVATING CIRCUMSTANCES

18 10. On or about July 18, 2004, while a patrol vehicle was waiting for a tow
19 truck to hook a vehicle up, Respondent struck the patrol vehicle from behind. The force of the
20 impact caused the patrol vehicle to hit the vehicle on the tow truck, which hit the tow truck
21 operator causing injury to the tow truck operator. Respondent refused to submit to field sobriety
22 tests and was subsequently arrested for driving under the influence of alcohol in violation of
23 California Vehicle Code section 23152(a) and 23152(b). There is no final disposition in this
24 matter.

25 PRAYER

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein
27 alleged, and that following the hearing, the Physical Therapy Board of California issue a
28 decision:

1. Revoking or suspending Physical Therapist License No. PT 28993, issued to MICHAEL MALACZEWSKI.

2. Ordering Michael Malaczewski to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: October 27, 2004

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

SD2004801093

Malaczweski Accusation.wpd